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JOINT RESOLUTION WITH RESPECT TO NUCLEAR ARMS REDUCTIONS

REPORT

ON S.J. RES. 212

TO THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

MADE BY ITS

SUBCOMMITTEE ON SEPARATION OF POWERS

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LETTER OF TRANSMITTAL

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., September 22, 1982.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, Dirksen Senate Office Building, Washington, D.C.

DEAR STROM: This is to inform you that the Subcommittee on Separation of Powers has completed its work on Senate Joint Resolution 212 and has prepared a report of its findings to the full committee. In accordance with Mr. Lide's directive of August 2, 1982, I am sending you this letter of transmittal so that the report may be printed.

As you will note, the administration stands in support of the conclusion of the subcommittee that the proposed resolution is an unconstitutional exercise of congressional power. The resolution, if passed, could only serve to promote the Communist-inspired nuclear freeze movement that currently threatens to undermine any serious negotiations regarding arms control.

Thanking you for your attention to this matter, I am

Sincerely yours,

JOHN P. EAST,
U.S. Senator.

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JOINT RESOLUTION WITH RESPECT TO NUCLEAR ARMS REDUCTIONS—REPORT ON S.J. RES. 212

I. Subcommittee Action

The Subcommittee on Separation of Powers of the Committee on the Judiciary, having studied the issue of the power of Congress to bind the United States to international treaty obligations by joint resolution and having held hearings on this matter, finds that Senate Joint Resolution 212 is not a constitutional exercise of the powers of Congress in the area of foreign affairs and recommends that the proposed resolution be rejected by the Senate.

II. Witnesses and Testimony

The Subcommittee conducted a hearing on Senate Joint Resolution 212 on July 30, 1982, at which the following individuals testified:

Honorable Jake Garn, United States Senator from Utah; Honorable Jesse Helms, United States Senator from North Carolina; Honorable Steve Symms, United States Senator from Idaho; A. Richard Richstein, Esquire, General Counsel of the United States Arms Control and Disarmament Agency; Dr. Harry Almond, Professor, National War College; Paul Kamenar, Esquire, Director of Litigation of the Washington Legal Foundation; and, Grover Rees III, professor, University of Texas Law School.

In addition to these distinguished witnesses, the Subcommittee received written testimony from Professor Charles Rice of the University of Notre Dame Law School. Letters were also received from Dr. Eugene V. Rostow, Director of the United States Arms Control and Disarmament Agency, and Mr. Kenneth M. Duberstein, Assistant to the President of the United States.

III. The Resolution and its Background

(a) SENATE JOINT RESOLUTION 212

Senate Joint Resolution 212, with respect to nuclear arms reductions, was reported by the Senate Committee on Foreign Relations on July 12, 1982. The purpose of the Resolution is to express support for the President's recent actions on strategic arms negotiations and "to formalize an interim policy on mutual SALT restraint that will contribute to stability and continuity while the United States pursues far-reaching reductions in nuclear weapons it seeks in START," the Strategic Arms Reductions Talks.

Of particular concern to the Subcommittee on Separation of Powers is the following language of Senate Joint Resolution 212:

> Whereas President Reagan has declared that the United States would continue to refrain from actions that would undercut existing SALT agreements as long as the Soviet Union shows equal restraint: Now, therefore, be it
>
> Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—
>
> (3) to provide a basis for progress during the START negotiations, the United States shall continue to refrain from actions which would undercut the SALT I and SALT II agreements, provided the Soviet Union shows equal restraint * * *

The accompanying report on Senate Joint Resolution 212 (S. Rep. 97–493, hereinafter referred to as "Report") states that the purpose of Paragraph 3, which establishes an "interim restraint regime," is:

> [T]o formalize the announced policy of the Reagan Administration on interim Salt (sic) restraint, and in doing so make clear to the Soviet Union that the United States government is unified in its determination to exercise restraint so long as the Soviet government behaves in a comparable way. It is the intention of the Committee thereby to strengthen the position of the President in the START negotiation. (Report, p. 6)
>
> By setting forth the President's statement in a joint resolution, to be considered by both Houses of Congress and signed by the President, the Committee intends that it will have the full force and effect of law. (Report, p. 10)

(The President's statement referred to in the Report was made in his 1982 Memorial Day speech at the Arlington National Cemetery.)

The latter statement from the report is qualified, however, by the subsequent declaration of the Committee on Foreign Relations that it does not intend the Resolution to "give rise to any private standing or cause of action to challenge the actions of the Executive Branch in the courts." (Report, p. 8; see also however, p. 10 of the same Report.)

While Paragraph 3 speaks in terms of SALT I and SALT II, the report of the Committee on Foreign Relations indicates that the "interim restraint regime" would not apply to the restrictions set forth in the Protocol to the SALT II Treaty "since the agreed term of that document has already expired." (Report, p. 7) Nor does the Foreign Relations Committee necessarily intend that the effect of the proposed Resolution "extend beyond the originally agreed upon termination date of the SALT II Treaty itself, December 31, 1985, or beyond the point at which these interim restraints are replaced by START limitations." (Report, p. 8) However, because of statements by members of the Administration announcing the Administration's intent to remain within the limitations of the SALT I Interim Agreement (which originally was set to expire in 1977 but which both parties to the agreement extended by unilateral declarations until the completion of the SALT II negotiations, i.e., May 11, 1979), the Committee on Foreign Relations does intend the proposal to apply to the SALT I Interim Agreement. (Report, pp. 9–10)

(b) THE SALT I AND SALT II AGREEMENT

Because the Resolution makes reference to the SALT I and SALT II agreements, it is important to take note of their present status in international and American constitutional law.

The SALT I agreements consist of three documents signed in 1972 by President Nixon and General Secretary Brezhnev. The first is a treaty known as the Anti-Ballistic Missile Treaty of 1972 (the "ABM Treaty") which sets limits to the number of ABM sites, radars, and missiles each side may test and deploy. The second is the Interim Agreement on the Limitation of Strategic Offensive Arms (the "Interim Agreement") which provides, inter alia, that no new ICBM, sea-launched ballistic missiles, or ballistic missile submarines shall be constructed and that compliance by the parties shall be verified by "national technical means." The third document of SALT I is a protocol establishing numerical limits on SLBM's and strategic submarines. The protocol was regarded as an "integral part" of the Interim Agreement.

The ABM Treaty was to be of "unlimited duration," although in its first Unilateral Statement the United States asserted that the treaty could be withdrawn if an agreement providing for a more complete strategic offensive arms limitation was not achieved within five years. The terms of the Interim Agreement provided that it, too, would expire in five years unless it was superseded by a subsequent agreement. The protocol would presumably expire on the same date as the Interim Agreement.

In 1977, both parties agreed upon a three-tiered general framework for a new SALT accord (SALT II). Rather than formally extend SALT I at that time, each country issued unilateral, parallel declarations of policy expressing the intention of each to comply with the goals and terms of SALT I until the negotiations leading to SALT II were completed. President Carter maintained that these declarations did not bind the United States in any way, and the Administration did not seek formal Congressional approval of the de facto extension. On May 11, 1979, the SALT II negotiations were formally completed; accordingly, the SALT I Interim Agreement and the Protocol expired at that time, if they had not already expired in 1977 as a matter of domestic constitutional law. The ABM Treaty, by the terms of the United States Unilateral Statement, may be withdrawn at any time, although it is in theory still in force and is currently undergoing the the five year review provided by its terms.

The SALT II agreements likewise consist of three documents. However, the principal instruments of SALT II are a treaty and a protocol to the treaty and not executive agreements. The third document is a joint statement that stresses the principles of "equality," "equal security," and "adequate verification by national technical means." The treaty places ceilings on strategic delivery vehicles, limits on the number of launchers of missiles equipped with MIRV's, and limits on the number of heavy bombers equipped with long-range air-launched cruise missiles (ALCM's). The number of heavy ICBM's is restricted to existing levels, while the number of re-entry vehicles (RV's) on existing ICBM's is limited to the maximum number tested on May 1, 1979. The parties promise "not to develop, test, or deploy

systems for rapid reload of ICBM launchers." Although the treaty permits modernization and replacement of existing systems, it prohibits development or testing of certain new weapons, with the exception that each party may develop one "new type" of light ICBM. Like SALT I, the SALT II accord also permits verification by "national technical means," while it prohibits "deliberate concealment measures."

The SALT II treaty and protocol were formally submitted to the Senate, and the Committee on Foreign Relations and the Committee on Armed Services held hearings on them in 1979. On January 3, 1980, however, President Carter asked that the Senate delay further consideration of the accord in response to the Soviet invasion of Afghanistan. It is apparent also that the treaty lacked the necessary support of two-thirds of the Senate at that time.

IV. Discussion of the Major Issues

(a) CONSTITUTIONAL PROBLEMS

Paragraph 3 of Senate Joint Resolution 212 poses several significant questions concerning the separation of powers principle of the Constitution and concerning present American and international law. The constitutional questions stem from the fact that the Resolution seeks to circumvent the Constitution's treaty-making process set forth in Article II, Section 2, Clause 2 and to give the "full force and effect of law" both to the now-expired SALT I agreements and to the SALT II treaty pending in the Senate. This attempt at circumvention arguably violates the Constitution in several ways.

First, by proposing to give the force of law to what is presently Administrative policy regarding strategic arms talks, the Resolution improperly limits the negotiating powers of the President, who "alone has the power to speak or listen as a representative of the Nation. He *makes* treaties with the advice and consent of the Senate; but he alone negotiates." *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936) Second, the Resolution would attempt to give binding effect to obligations of a treaty which has never received the requisite approval of two-thirds of the Senate and would therefore cause a Congressional transformation of a treaty made by the President into an executive agreement submitted for Congressional approval. Under normal and recent practice, it has become the province of the President to determine the legal forms as well as the terms of America's international obligations. This Resolution violates that practice.

Finally, and most obviously, the attempt to give treaty obligations the force of law by the approval of simple majorities of both Houses of Congress instead of by constitutionally mandated two-thirds majority of the Senate violates the exclusive advice and consent function of the Senate prescribed by the Constitution.

By giving the force of law to a statement of mere policy, the proposed Resolution improperly limits the President's power to carry out his function as America's negotiator with foreign nations. Several witnesses who appeared before the Subcommittee argued persuasively that the proposed Resolution would "tie the hands" of the President in his negotiations with the Soviet Union over strategic arms agreements. (Transcript of the Hearings by the Subcommittee on Separation of

Powers on Senate Joint Resolution 212, hereinafter referred to as "Transcript", Mr. Richstein, pp. 42–43; Mr. Kamenar, p. 65; and Professor Rees. p. 74.

A. Richard Richstein, General Counsel of the United States Arms Control and Disarmament Agency, stated the case quite succinctly:

> It is clear from both the language of the Constitution and the practice that has developed under it that it is the President who is responsible for the conduct of foreign policy and negotiates the treaties which are sent to the Senate for advice and consent. By giving legally binding effect to the President's announced policy of interim restraint, the proposed resolution would affect the President's ability to negotiate strategic arms agreements in the START and INF talks currently underway in Geneva. (Transcript at pp. 41–42.)

More recently, in a letter dated August 11, 1982, from Mr. Kenneth M. Duberstein, Assistant to the President, and addressed to the Chairman of this Subcommittee, the White House expressed its continuing disapproval of this aspect of the proposed Resolution:

> The language in Section 3 of the Resolution, however, is inappropriate for a number of reasons. If the Committee's intent was to endorse the Presidents' restraint policy, we believe that would be better accomplished in a non-binding and advisory form. This would avoid the legal, technical and political problems that have been raised by the existing language.
>
> With respect to interim restraints, our current policy is to refrain from actions which would undercut existing agreements so long as the Soviet Union shows equal restraint. This should improve the environment for negotiations on reductions, and avoid irreversible acts which would complicate the negotiation of the limitations and provisions we seek in our START proposal. We base our policy of not undercutting existing agreements on our forward-looking commitment to START and not on any change in our assessment of the flaws of past SALT agreements. (Letter of August 11, 1982, from Kenneth M. Duberstein to Senator John P. East, Chairman of the Separation of Powers Subcommittee)

Given the function of the President set forth in Article II, Section 2, Clause 2 of the Constitution as the prescribed negotiator of treaties entered into by the United States, and given the testimony of knowledgeable witnesses that the proposed Resolution would seriously hamper the Presidents' ability to negotiate agreements vitally affecting the security of our country, the Subcommittee finds the Resolution, if enacted, would be not only an imprudent, but a constitutionally impermissible, intrusion by Congress into the treaty-making powers of the President.

The proposed Resolution also attempts to bind the United States to treaty obligations that have been approved by neither two-thirds of the Senate nor the President. It was established early in the history of our Republic that the "President is the sole organ of the nation in its external relations, and its sole representative with foreign nations." John Marshall in the House of Representatives, March 7, 1800. In 1816, the Senate Committee on Foreign Relations reported:

> The President is the constitutional representative of the United States with regard to foreign nations. He manages our concerns with foreign nations and must necessarily be most competent to determine when, how, and upon what subjects negotiation may be urged with greatest prospect of success. 8 U.S. Senate Report, Committee on Foreign Relations 24 (1816).

The President's authority in the area of foreign affairs is based upon express statements in Article II of the Constitution and upon cases and commentaries concerning those powers over the past two centuries. See, especially, *U.S.* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936).

The function of the Senate in foreign affairs is nevertheless substantial. Regarding treaties, the Senate may advise the President and, of course, must approve by two-thirds majority any treaty made by the President before the treaty may become effective. Even Senate approval, however, does not necessitate such effect: the President may still refuse to complete the treaty with the other parties by declining to exchange instruments of ratification with them.

Senate Joint Resolution 212 does violence to the prescribed functions of both the President and the Senate. The Resolution proposes to give binding effect to international agreements which have expired (SALT I) and to treaty obligations which have not yet been approved by two-thirds of the Senate and which appear to have no reasonable prospects of approval. While the effect of the Resolution, if enacted, on domestic and international law is not clear, the purpose of the proposal is objectionable on two grounds.

First, as Senator Symms noted (Transcript, p. 33), the proposal is an attempt to transform a treaty made by the President into something like an executive agreement. Second, by making the effectiveness of the international obligations contingent on Congressional approval and, in the event of a Presidential veto and subsequent Congressional override, not on the President's necessary approval, the Resolution replaces the President as our "sole organ of the nation" in international relations with the Congress.

Regarding Congressional transformation of a treaty into some other form of international agreement, the President's function of determining the form of our international agreements has been acknowledged. (8 S. Rep. Comm. on For. Rel. 24(1816); *United States* v. *Curtiss-Wright*, 299 U.S. 304, 321(1936); McDougal and Lans, "Treaties and Congressional Executive or Presidential Agreements: Interchangeable Instruments of National Policy:I", 54 Yale Law Journal 181, 187–88(1945)). The determination of the form an agreement shall take—be it treaty, executive agreement, protocol, or any of the other recognized instruments of international agreement—is often inextricably linked to the negotiation of the terms of the agreement. (*United States* v. *Curtiss-Wright Export Corp.*, *supra*, at 321.) This statement is not to deny that Congress may sometimes authorize the President to enter into executive agreements in areas in which Congress has authority under the Constitution. The SALT Treaty, however, was not made pursuant to any prior Congressional authorization of this kind. The Treaty was made by the President and was submitted to the Senate as a treaty. The attempt to transform a

negotiated treaty into another form of agreement exceeds the Senate's function of giving advice and consent and is not a power granted by the Constitution.

The second flaw is even more significant. To attempt to bind the United States to international obligations through the form of a joint resolution makes possible in principle what the Constitution and subsequent cases and commentary most certainly reject. The joint resolution, if vetoed by the President, may become law if Congress were to override the veto. While this scenario is most unlikely in the present instance, it is the principle itself that is fatally flawed. The President must represent our nation in foreign affairs. This was recognized by the Senate Committee on Foreign Relations in the same 1816 report cited above:

> For his conduct [the President] is responsible to the Constitution. The committee considers this responsibility the surest pledge for the faithful discharge of his duty. They think the interference of the Senate in the direction of foreign relations calculated to diminish that responsibility and thereby to impair the best security for the national safety. The nature of transactions with foreign nations, moreover, requires caution and unity of design, and their success frequently depends on secrecy and dispatch.

In the present instance, these words apply with as much force today as they did one hundred sixty-five years ago.

(b) QUESTIONS OF AMERICAN STATUTORY LAW AND INTERNATIONAL LAW

In addition to these possible constitutional defects, the proposed Resolution is not justified on the basis of statutory law, i.e., Section 33 of the Arms Control and Disarmament Act of 1961, or on the basis of international law in the form of the Vienna Convention on the Law of Treaties.

The Committee on Foreign Relations argues that Senate Joint Resolution 212 is justified by Section 33 of the Arms Control and Disarmament Act of 1961 (22 U.S.C. Section 2573). Section 33 provides, in part:

> No action shall be taken under this chapter or any other law that will obligate the United States to disarm or to reduce or to limit the Armed Forces or armaments of the United States except pursuant to the treaty-making power of the President under the Constitution or unless authorized by further affirmative legislation by the Congress of the United States.

As explained by its sponsor, Representative L. H. Fountain of North Carolina, Section 33 is intended to forbid the President from acting on his own, i.e., without the approval of two-thirds of the Senate or without authorization by affirmative legislation of the entire Congress. Cong. Rec. 87th Cong., Vol. 107, p. 20309, Sept. 19, 1961. Thus the purpose of Section 33 is not to give Congress the option of binding the United States to agreements but to limit the powers of the President in the area of disarmament by eliminating simple executive agreements and requiring either a treaty or an agreement backed up by the Congressional approval. Senate Joint Resolution 212 is seen by the

Foreign Relations Committee as the affirmative legislative authority required by Section 33, and "(i)n this regard, enactment of this joint resolution increases the President's options in dealing with the Soviet Union." (Report, pp. 9–10).

The problem with the proposed Resolution when it is offered as prospective authorization for the President "to disarm or to reduce or to limit the Armed Forces or armaments" is that Senate Joint Resolution 212 simply does not appear on its face to be an authorization for the President. By its clear terms it is a self-executing prohibition of United States' actions that would undercut one expired set of agreements and one set of agreements presently pending Senate approval. The Resolution attempts, not to increase the President's options, but to impose an immediate international obligation on the President and the United States. Indeed, far from welcoming the Resolution as another arrow in the President's quiver, the White House believes that the endorsement of the President's interim restraint policy "would be better accomplished in a non-binding and advisory form." (Duberstein letter, August 11, 1982; see also General Counsel Richstein's testimony, Transcript, pp. 42–43.)

In sum, as an authorization under Section 33 of the Arms Control and Disarmament Act of 1961, the proposed Resolution seems an example of misapplied law and, as a proffered weapon for the President, an unwanted one. Senate Joint Resolution 212 cannot be justified under Section 33 of the Arms Control and Disarmament Act.

Finally, the Foreign Relations Committee Report contends that the Resolution is "generally consistent with the applicable standard for a treaty signatory under international law," referring to the Vienna Convention on the Law of Treaties. Article 18 of that Convention provides:

> A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:
>
> (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or,
>
> (b) it has expressed its consent to be bound by the treaty and provided that such entry into force is not unduly delayed.

While neither the United States nor the Soviet Union has ratified the Vienna Convention, the United States government has interpreted Article 18 as reflecting "generally acceptable norms of international law" and, therefore, as binding customary international law on the United States during the period between the signing of a treaty or its ratification." (Turner, "Legal Implications of Deferring Ratification of SALT II," 21 Va. J. of Intl. Law 747 (1980–81))

The difficulty with this argument is that it proves too much. If we accept Article 18's authority, only SALT II would seem to be affected because SALT I, by its own terms, has expired. But SALT II presents a problem of applicability as well. If it is argued that SALT II is "pending entry into force," then Senate Joint Resolution 212 seems superfluous in light of Article 18: under customary international law.

the United States is already obligated to refrain from acts that would defeat the purpose of SALT II and the Resolution is not necessary.

On the other hand, if the President's repeated assertion that SALT II is unacceptable is interpreted as it appears it must be—that the United States, speaking through its President, has clearly expressed its intention not to become a party to SALT II—then Article 18 and customary international law appear not to apply, and a defense of the Resolution based upon Article 18 is misplaced.

While the clearest answer to the question of the applicability of international law would result from the President withdrawing the SALT II Treaty from the Senate, such action is not necessary in order to see that Senate Joint Resolution 212 cannot be justified by reference to the Vienna Convention or to customary international law.

V. Conclusions

The Subcommittee concludes that Senate Joint Resolution 212 should be rejected by the Senate because it is of questionable constitutionality and because it is imprudent as well. In attempting to bind the United States to treaty obligations wihout securing the approval of two-thirds of the Senate, the Resolution improperly limits the President's negotiating powers in the area of foreign affairs; it improperly attempts to transform a treaty into some other form of international obligation; and it improperly ignores the exclusive advice and consent function of the Senate by making the obligation dependent upon approval by the House of Representatives. Nor is the measure justified by the authority of Section 33 of the Arms Control and Disarmament Act of 1961, whose purpose is not to extend the power of Congress in the area of foreign affairs but to limit the power of the President in the area of disarmament. Finally, Article 18 of the Vienna Convention does not provide a foundation for the Resolution in international law.

The Subcommittee on Separation of Powers therefore recommends that Senate Joint Resolution 212 be rejected by the Senate.

VI. Appendix

(a) Letter from Kenneth M. Duberstein, Assistant to the President of the United States, to Hon. John P. East, Chairman, Subcommittee on Separation of Powers, August 11, 1982

The White House,
Washington, August 11, 1982.

Hon. John P. East,
U.S. Senate,
Washington, D.C.

Dear Senator East: This is in further response to the June 27 letter which you cosigned with three of your Senate colleagues. We appreciate your expression of concern over the question of the SALT

II Treaty and the recent Senate Foreign Relations Committee arms control resolution containing a reference to SALT II.

Let me assure you that the President will not support any resolution which would make the SALT II Treaty legally binding. As you know, he spoke out strongly against the SALT II Treaty during his campaign and before. The SALT II Treaty was unacceptable in 1979, and it remains so today.

The President welcomes the fact that the Senate Foreign Relations Committee resolution contains language supporting our START proposal which calls for substantial reductions to equal levels. In addition, the Committee rejected the nuclear freeze proposal. Those are positive elements.

The language in Section 3 of the Resolution, however, is inappropriate for a number of reasons. If the Committee's intent was to endorse the President's interim restraint policy, we believe that we would be better accomplished in a non-binding and advisory form. This would avoid the legal, technical and political problems that have been raised by the existing language.

With respect to interim restraints, our current policy is to refrain from actions which would undercut existing agreements so long as the Soviet Union shows equal restraint. This should improve the environment for negotiations on reductions, and avoid irreversible acts which would complicate the negotiation of the limitations and provisions we seek in our START proposal. We base our policy of not undercutting existing agreements on our forward-looking commitment to START and not on any change in our assessment of the flaws of past SALT agreements. At the same time, we will continue carefully to monitor Soviet activity with regard to existing agreements.

Our policy does not constitute acceptance of the failures of SALT II such as the unilateral right of the Soviets to heavy missiles, the significant Soviet advantage in ballastic missile throw-weight, the exclusion of the Backfire bomber, the problems associated with defining the one new type of ICBM permitted by the Treaty, or any other of the serious flaws which made SALT II unacceptable.

This position represents an interim policy which allows for our program for modernization of our strategic forces. The modernization program, as you know, upgrades all three legs of the strategic Triad and also calls for vigorous improvements in command, control and communications for our strategic forces. These programs must go ahead if we are to maintain a credible deterrence posture.

The underlying foundation of the President's strategic nuclear policy is the national security interest of the United States. Our policy toward interim restraints will depend on our continuing assessment of this interest. Rest assured that as we pursue the goal of stabilizing and verifiable reductions in Soviet and U.S. nuclear weapons, we are mindful of the need to maintain a strong and stable nuclear deterrent.

With best wishes,

Sincerely,

KENNETH M. DUBERSTEIN,
Assistant to the President.

(b) TEXT OF SENATE JOINT RESOLUTION 212

[S.J. Res. 212, 97th Congress, 2d Session]

JOINT RESOLUTION—WITH RESPECT TO NUCLEAR ARMS REDUCTIONS

Whereas the greatest challenge facing mankind is to prevent the occurrence of nuclear war by accident, miscalculation, or design;

Whereas an unrestricted arms race would threaten peace and security, divert resources needed for the betterment of mankind, and undermine the mutual confidence needed to attain agreement on a new arms reductions agreement;

Whereas the American people, who are a people of peace, maintain nuclear armaments only in the defense of freedom and yearn for world conditions in which they could do far more to lift the burdens of human privation and despair;

Whereas the United States and the Soviet Union have agreed to begin formal negotiations on the limitation and reduction of strategic armaments in Geneva on June 29, 1982;

Whereas President Reagan has declared that the United States would continue to refrain from actions that would undercut existing SALT agreements as long as the Soviet Union shows equal restraint: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That—

(1) the Congress commends the President for his proposal to the Soviet Union to initiate strategic arms reductions talks (START) and supports his announced objective of attaining an agreement providing for verifiable, equitable, and militarily significant reductions in strategic offensive arms;

(2) such agreement should, among other restrictions, provide initially for sharply reduced and equal levels on the aggregate number of ICBM's and SLBM's and the aggregate number of warheads deployed on these systems, and subsequently for further significant, balanced, and verifiable reductions of nuclear weaponry in a manner which enhances stability and deterrence;

(3) to provide a basis for progress during the START negotiations, the United States shall continue to refrain from actions which would undercut the SALT I and SALT II agreements, provided the Soviet Union shows equal restraint. The United States should raise questions of possible inconsistencies related to this interim restraint regime with the Soviet Union through the United States/Soviet Standing Consultative Commission (SCC). If the SCC is not available or appropriate, then the President should raise the issue in another appropriate channel;

(4) to encourage arms restraint and crisis stability through steps which build confidence, the United States should also propose to the Soviet Union and other nations practical measures—

(a) to reduce the danger of nuclear war through accident or miscalculation,

(b) to prevent the use of nuclear weapons by third parties, including terrorists,

(c) to cooperate more closely to halt the worldwide proliferation of nuclear weapons, including the establishment of additional measures by nuclear supplier nations, and

(d) to involve all nations possessing nuclear weapons in the arms control process at the appropriate time;

(5) the President is urged to complete his review of the pending Threshold Test Ban Treaty and the Peaceful Nuclear Explosions Treaty and promptly report his recommendations with respect to the ratification of these treaties; and

(6) the United States should continue to press month after month, year after year, to achieve balanced, stabilizing arms reductions, looking at the earliest possible time, to the elimination of all nuclear weapons from the world's arsenals.

O